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RUEHWL/AMEMBASSY WELLINGTON 2574
RHHMUNA/HQ USPACOM HONOLULU HI
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SUBJECT: THAI COURT SENTENCES AUSTRALIAN TO THREE YEARS FOR
LESE MAJESTE OFFENSE; NEW CHARGES FOR BBC REPORTER

REF: 08 BANGKOK 3398 (UPDATE ON LESE MAJESTE CASES)

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Classified By: DCM James F. Entwistle, Reason 1.4 (B, D)

SUMMARY AND COMMENT

11. (C) The Thai Criminal Court sentenced Australian author Harry Nicolaides January 19 to three years imprisonment for the criminal offense of lese majeste, or offense to the monarchy, related to remarks in his 2005 novel Verisimilitude. Nicolaides had remained imprisoned without bail since being taken into custody August 31, 2008. In another case involving a foreigner, BBC reporter Jonathan Head received news of a third lese majeste allegation on December 23, 2008 based on his coverage of the November 2008 seizure of Bangkok's airports by the People's Alliance for Democracy (PAD). Meanwhile, PM Abhisit addressed foreign journalists' concerns related to recent lese majeste cases and a new draft amendment law aimed at strengthening penalties for lese majeste during a Foreign Correspondents Club of Thailand (FCCT) event on January 14, stating that some cases did not meet the legal standards and should be dropped, and distancing himself from the draft bill, stating that his government had other priorities.

12. (C) Comment: In past lese majeste cases involving foreigners, guilty pleas with expressions of remorse, both of which Nicolaides belatedly made, have led to pardons and quick releases. Less clear are the implications for future court hearings related to lese majeste offenses by Thai citizens, such as the ongoing cases against academic Giles Ungpakorn and political activists Jakrapob Penkair and Daranee Choengchansinlapakun. Concern over the legal implications of lese majeste has led at least one NGO, Amnesty International, to approach advocacy on the issue cautiously, though the AI Country report on Thailand expected in May will address lese majeste. Notwithstanding PM Abhisit's implied expression of support for the BBC's head, the accusations against Head and the Nicolaides ruling send a message to foreign journalists and academics that the lese

majesete provision in the criminal code can, and will, be applied to foreigners. We will continue to monitor the new government's treatment of lese majeste cases in relation to its pledged loyalty to the institution of the monarchy, as well as its stated commitment to a media environment freer from government control than that which existed under PM Thaksin and his political allies. End Summary and Comment.

CONVICTION OF AUSTRALIAN PROVES LAW HAS TEETH

¶3. (SBU) The Bangkok Criminal Court sentenced Australian self-published author, and former resident of Thailand, Harry Nicolaides to three years imprisonment for lese majeste offenses on January 19. The court initially sentenced Nicolaides to six years imprisonment, but reduced the punishment to three years after he pleaded guilty. Nicolaides had remained in prison without bail as of August 31, 2008 when police arrested him at Bangkok's international airport. He was formally charged on November 21, 2008; authorities had denied four requests for bail on the grounds that Nicolaides presented a flight risk. Nicolaides appeared gaunt and distressed in photos and TV coverage of the sentencing, lending credibility to local NGO sources who described his treatment in prison as harsh due to the nature of the charge.

¶4. (C) Nicolaides published 50 copies of his novel Verisimilitude in 2005; fewer than ten copies of the book ever sold. However, Nicolaides sent copies to the Palace, the office of the Crown Prince, and the National Library, where it remains on the shelves, according to a foreign journalist who recently checked the book out to read the offending

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material. According to media reports, Nicolaides sent advance copies of the book to the palace and two government ministries for approval, but never received an official response. We understand the following passage caused Nicolaides' conviction; because it is a lese majeste offense to repeat offensive material, press reports only reference it in general.

Begin Text: "From King Rama to the Crown Prince, the nobility was renowned for their romantic entanglements and intrigues. The Crown Prince had many wives, "major and minor", with a coterie of concubines for entertainment. One of his recent wives was exiled with her entire family, including a son they conceived together, for an undisclosed indiscretion. He subsequently remarried with another woman and fathered another child. It was rumored that if the prince fell in love with one of his minor wives and she betrayed him, she and her family would disappear with their name, familiar lineage and all vestiges of their existence expunged forever." End Text

¶5. (C) An Australian embassy official (protect) told us January 20 that their Embassy had been working the case behind the scenes with the RTG for months, but in a lowkey manner so as not to make things worse for their national. The embassy would continue to do so as they and Nicolaides' lawyer help him apply for a royal pardon (in particular by helping to expedite the application). According to the Australians, Nicolaides' lawyer told them the sentence was at the lenient end of what he was expecting and that he had had no informal indication from the judiciary beforehand what to expect.

BBC REPORTER TARGETED FOR THIRD LESE MAJESTE COMPLAINT

¶6. (SBU) In a separate case of lese majeste being pursued against a foreigner, BBC reporter Jonathan Head received a copy of a third criminal complaint filed against him by Police Lieutenant Wattanasak Mungkandee on December 23. Two previous charges submitted by Wattanasak remained outstanding

against Head, despite suggestions from influential individuals that the Crime Suppression Division had decided not to pursue the case.

¶17. (C) Head showed us a copy of the most recent charge January 7, leaked to him by an associate in the police station, which detailed a December 3 radio report, later transcribed for the BBC's online edition, in which he reported about allegations of the palace's link to the PAD. Head added that his reporting on the palace link to PAD was a story covered by all journalists working on Thailand; he noted that the Queen's October 13 appearance at a PAD protester's funeral was "a godsend," providing journalists with an open fact on which to base coverage without being at risk for lese majeste. His editor had urged him to use a generic BBC byline in future reports, but Head refused.

¶18. (C) Head told us that the Thai mission in London had summoned the BBC foreign editor for a meeting following Head's December 3 report, objecting to Head's reference to the Queen at the funeral, and urged the BBC to abandon this line of reporting. Head added that the BBC foreign editor may visit Bangkok in February to meet with the Ministry of Foreign Affairs about his case in an effort to encourage dialogue or at least "to agree to differ." Head told us that he had to keep BBC from striking out against Wattanasak in the court system, which he felt would only aggravate his situation. He noted that Nicolaides would have fared better with a less confrontational legal approach.

ABHISIT AIMS TO CALM NERVES AT FCCT

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¶19. (SBU) Many observers remain skeptical of the Democrat Party's approach to lese majeste after PM Abhisit listed protection of the monarchy as his top priority in his inaugural speech on December 30. During a January 14 dinner at the Foreign Correspondents' Club of Thailand (FCCT) as part of the new government's effort to reach out and burnish Thailand's image, the FCCT seated Head next to Abhisit. Many journalists questioned Abhisit about lese majeste in the Q&A session which followed his presentation. Abhisit replied that there needed to be a balance between application of the law, a legitimate tool to protect the institution of monarchy, and freedom of expression; he said he had told the police chief to uphold the law but not to allow people to abuse it as a political instrument. Abhisit suggested a number of cases would be dropped because there had been no violation, adding to laughter and applause: "though I am not looking at anyone in the room in particular as I say this" - a clear reference to his dinner partner Head.

¶10. (SBU) In response to a question about a draft amendment which would strengthen penalties for lese majeste offenses, proposed by Justice Minister Phiraphan Salirattawiphak when the Democrat Party was in opposition, Abhisit noted that he had talked to Phiraphan about the proposal, made clear that the current government faced many challenges, stated that this bill would not be a priority for him, and added, in the one "I'm in charge" flourish of the evening: "and I'm the Prime Minister, and need not bend to his agenda."
JOHN